

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

FIRST APPEAL NO. 833 OF 2006
IN
ORIGINAL APPLICATION NO. 833 OF 2006

Smt. Indira Damodaran ... Appellant

Vs.

Union of India Through:

General Manager, Western Railway ... Respondent

CORAM: S.K.SHAH, J.

DATE : 12th April, 2007.

P.C.

1. Heard Counsel on both sides.

2. The appellant filed the Appeal against the order passed by the Railway Claims Tribunal, Mumbai, rejecting the appellant's claim for compensation holding that it was not an untold incident but it is a case of knocking down by a local train while crossing the railway line.

3. I have gone through the judgment as also the evidence. There is only evidence of alleged

eye-witness, Mohammed. His evidence has also been properly considered by the Tribunal. He claims to be an eye-witness. He was selling garments. He was to go to Churchgate Station. The train by which the deceased was knocked down was the train coming from Churchgate Station. The deceased was lying at the Churchgate end platform. Witness was to go to Churchgate side. Obviously, he was watching for the train coming from Borivli side and watching the train coming from Borivli for going to Churchgate he would not have seen the accident. Moreover, he also did not tell the police who had arrived and who took the injured to the Nair Hospital, that he had seen the deceased falling from running train. He also could not have seen the deceased falling from train as the deceased was found lying in between the two tracks which were on the opposite direction.

4. The record of the Railway Station Master indicates that it was a case of knocking down while crossing the road. There is no other evidence from the eye-witness.

5. It is vehemently submitted on behalf of the appellant that in case of knocking down while crossing the railway line, the motorman is supposed to have made a report. The absence of such report however cannot give the appellant the ground of untoward incident.

6. Under the circumstances, I do not find any merit in the Appeal. The Appeal is, therefore, dismissed.

(S.K.SHAH, J.)